

COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE NW WASHINGTON, DC
WASHINGTON, DC 20004-2401 NEW YORK
TEL 202.662.6000 LONDON
FAX 202.662.6291 BRUSSELS
WWW.COV.COM SAN FRANCISCO

CHRISTINE E. ENEMARK
TEL 202.662.5136
FAX 202.778.5136
CENEMARK@COV.COM

May 23, 2006

BY ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Oral and Written *Ex Parte* Presentations
WT Docket No. 05-211

Dear Ms. Dortch:

In accordance with Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, Cook Inlet Region, Inc. ("Cook Inlet") hereby gives notice of oral and written *ex parte* presentations in the above-referenced proceeding. The substance of Cook Inlet's oral presentation is summarized in the enclosed written material, which was also furnished as part of these presentations. In addition, Cook Inlet provided copies of its 2005 Annual Report, Alaska Native Corporations – Annual Economic Report Based on 2003 Financial Data (A Look at Selected Data for 13 Native Regional Corporations and 28 Native Village Corporations), and a Services Directory for Alaska Native and Native American Families in the Cook Inlet Region of Alaska, all of which are publicly available.

Cook Inlet's presentations were made on March 22, 2006, by Margie Brown, the President and CEO of Cook Inlet, and Sophie Minich, Senior Vice President – Business Development, to Commissioner Tate and her legal advisors Dana Shaffer Aaron Goldberger during their visit in Anchorage, Alaska.

Respectfully submitted,



Christine E. Enemark
Counsel for
Cook Inlet Region, Inc.

Enclosure

Cook Inlet Region, Inc.
Proposed Revisions to FCC's Designated Entity Rules
WT Docket No. 05-211 Second Report and Order (released April 25, 2006)

The following is an outline of certain new provisions included in the FCC's revised designated entity ("DE") rules as adopted on April 25, 2006. The new provisions create significant barriers to the ongoing success of the DE program and should be revised.

- The new rules prohibit an otherwise qualified DE from entering into any agreement with any other single entity to use more than 25 percent of the DE's spectrum or with any two or more entities to use more than 50 percent of the DE's spectrum (in the aggregate).
 - (1) This new restriction unnecessarily limits a DE's ability to put the spectrum it wins at auction to commercial use. By restricting the number and type of commercial alternatives available to DEs, the FCC increases risks associated with DE participation in spectrum auctions and ownership of licenses. As a result, fewer DEs will participate in future spectrum auctions.
 - (2) Currently, Cook Inlet and T-Mobile are parties to a wholesale agreement that permits T-Mobile to purchase more than 25% of the total minutes of personal communications services produced on Cook Inlet's systems. Under the new rules, this relationship would be prohibited for future auctions.
 - (3) The FCC has not demonstrated that these leasing relationships are problematic from a public policy standpoint or that they otherwise undermine the viability and purpose of the DE program.
- The new rules provide that any licensee who received a bidding credit on a license will be required to repay that bidding credit if it transfers or assigns the license to a non-qualified DE within the first ten years. The original rules provided for repayment in the event of any transfer or assignment to a non-qualified DE within the first five years or prior to satisfaction of the five year construction deadline, whichever occurs first.
 - (1) DEs are more likely to participate in spectrum auctions if they know an exit strategy is available to them if they fail to achieve their business plans. A ten-year exit horizon is too lengthy; if no viable exit alternative exists, fewer DEs will participate in auctions.
 - (2) The longer unjust enrichment period will significantly reduce or restrict capital investment in DEs. No significant investor will be willing to risk its return on investment over a ten year horizon.
 - (3) In addition, to the extent any DE business fails, it may end up holding the spectrum without providing service to the public rather than cutting its losses and transferring or assigning the spectrum to a viable operator.
 - (4) At a minimum, the revised unjust enrichment requirement should be applied only to those licenses that are initially awarded by the FCC after the date of these new rules

were adopted. It is unfair to apply these rules retroactively to DEs who currently hold licenses which were applied for and bid on under the expectation that the rules in place at that time would apply. It is also unfair to apply these rules retroactively to DE licenses that have passed the five-year construction deadline and that, under the previous rules, would be free from unjust enrichment penalties.

- The grandfathering provisions make it clear that the FCC will not reevaluate existing relationships under the new rules that restrict certain material relationships. How these rules apply upon the occurrence of a change in license status being filed with the FCC is still not clear.
 - (1) The new rules explicitly reference the FCC's ability to reevaluate commercial relationships when any assignment or transfer of control application is filed. Presumably, this rule would apply when a DE submits a filing in order to acquire a license as an assignee or transferee. On the other hand, this rule would not allow the FCC to reevaluate the DE's existing commercial arrangement with respect to that license when it files an application to divest a license as an assignor or transferor.
 - (2) For example, if Cook Inlet were to file an application to assign one of the DE licenses it won in Auction 58 to a third party, the FCC should not be free to reevaluate Cook Inlet's commercial relationship with T-Mobile with respect to that license and determine that, because that relationship does not satisfy the requirements of the new rules, an unjust enrichment penalty is triggered. If, however, Cook Inlet were to file an application to acquire a DE license using its Auction 58 subsidiary, the FCC would be free to determine that Cook Inlet's commercial relationship does not satisfy the requirements of the new rules and therefore that subsidiary could not acquire that license as a qualified DE.